S.B. CIVIL REVISION PETITION NO.290/2005

Hansraj and others. vs. Kishanlal and others.

Date : 25.7.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. RC Gaur, for the petitioner.

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Heard.

The petitioners are aggrieved against the order dated 5.5.2005 by which their objection petition under Order 21 Rule 23(2) CPC was dismissed by the executing court.

Brief facts of the case are that the decree holders – respondents no.1 and 2 filed a suit for possession against the petitioners on the basis of the sale deed alleged to have been executed by the petitioners themselves in favour of the decree holder. The suit was decreed and thereafter, an appeal was preferred which was dismissed by the appellate court on 29.1.2002.

According to learned counsel for the petitioners, the petitioner no.7 Sanjay was minor at the time of filing of the suit by the decree holders and his interest was not properly protected by his natural guardian and the Court has not appointed legal guardian for him and, therefore, the decree against the petitioner is null and void.

I have considered the submissions of learned counsel

for the petitioners and have perused the reasons given in the impugned order.

The petitioner Sanjay was impleaded as party through his natural guardian. The suit was contested by all the family members of Sanjay. The appeal was also preferred against the judgment and decree of the trial court but the judgment debtor could not get the reversal of the same. Not only this, but it appears that the petitioner no.7 Sanjay joining hands with the rest of the judgment debtor preferred the petition, therefore, the executing court was right in holding that Sanjay's interest was fully protected by his natural guardian and the petitioners failed to prove that there is conflict of interest of rest of the petitioners against the petitioner no.7 – Sanjay.

In view of the above, I do not find any merit in this revision petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya